

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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INNOVATION VENTURES, LLC;
LIVING ESSENTIALS, LLC and INTERNATIONAL
IP HOLDINGS, LLC,

Plaintiffs,

**ANSWER TO SEVENTH
AMENDED COMPLAINT**

- against -

12 Civ. 5354(KAM)

ULTIMATE ONE DISTRIBUTION CORP.,
ET AL.,

Defendants.

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Defendants, Excel Wholesale Distributors, Inc. and Farid Tursonzada respectfully

Answer the Complaint herein as follows:

1. Denies knowledge or information sufficient to form a belief as to paragraphs of the Complaint numbered 1 through 20, 23 through 88, 92 through 119, 121 through 168, 172 through 251, 294 and 295.
2. Denies each and every allegation in paragraphs of the Complaint numbered 273 through 277, 279 through 284, 286 through 292, 294 through 301, 304 through 308, 310 through 314, 316 through 319, 321 and 322.
3. Repeats each and every admission, denial or other answer interposed by the Defendants with respect to paragraphs of the Complaint 252, 258, 264, 272, 278, 285, 293, 302, 309, 315 and 320.
4. Denies each and every allegation of paragraphs 169, 170 and 171 but admits that on October 22, 2012 two individuals purchased 108 bottles of what Defendants believed to be

real orange 5-HOUR ENERGY from Excel Wholesale Distributors, Inc. at 15-13 132nd Street, College Point, New York 11356. That thereafter Living Essentials on November 5, 2012 executed a Court seizure order upon Excel Wholesale Distributors, Inc.

5. Defendants respectfully refer to the Court for resolution and determination all questions of law or fact raised in paragraphs of the Complaint numbered 89, 91, and 303. No admission of any fault is made by the Answering Defendants.

**As and For a First Affirmative Defense on
Behalf of Farid Tursonzada and Excel Wholesale Distributors, Inc.**

6. If the Defendants are found to have purchased and/or sold counterfeit 5-HOUR ENERGY or any related product, then and in that event such purchase and/or sale was inadvertent, unintentional, and without knowledge by the Defendants, their agents, servants, or employees as to the true nature of the product, and the Complaint herein does not allege such scienter with respect to this Defendant.

7. That the counterfeit product packaging as specifically described in the Complaint was faithfully reproduced and distinguishable from the authentic product only with a close and meticulous inspection.

8. That the Defendants purchased Plaintiffs' products from one wholesaler/distributor, known or believed to be a reputable business who had never before sold to the Defendant, to their knowledge, any counterfeit product produced by any manufacturer.

9. That this Defendant sells multiple different products in which they have developed the confidence of their customers that any product purchased therein are of the highest quality and are authentic as opposed to counterfeit origin.

10. That the Defendants would not jeopardize their customers' confidence and relationships if they had the slightest suspicion that items appearing to be Plaintiff's products were, in fact, counterfeit.

**As and For a Second Affirmative Defense on behalf
of Defendants Excel Wholesale Distributors, Inc. and Farid Tursonzada**

11. By reason of the foregoing, this Defendant did not violate any Federal or State laws or regulations, or common laws, relating to the sale of counterfeit product, including, but not limited to, 15 U.S.C. §1114(1)(a); 15 U.S.C. §1114(1)(b); 15 U.S.C. §1125(a)(1)(A); 15 U.S.C. §1125(a)(1)(B); 15 U.S.C. §1125(c); 17 U.S.C. §106; New York General Business Law §349; nor did this Defendant engage in any conspiracy to violate said laws or regulations.

12. Accordingly, the Complaint herein fails to state a cause of action against this Defendant.

CROSS CLAIM

As and For a Cross-Claim Against Defendant Top Choice Trading USA, Inc.

Defendants Farid Tursonzada and Excel Wholesale Distributors, Inc. Allege as Follows:

13. Upon information and belief, Defendant Top Choice Trading USA Inc. ("Top Choice") is a New York Corporation with its principal place of business at 190 Flushing Avenue, Ridgewood, New York 11385.

14. That heretofore, and prior to the commencement of this action, Defendant, Excel Wholesale Distributors Inc. ("Excel") and Farid Tursonzada ("Tursonzada") purchased from Top Choice various products at wholesale for resale in the 7-ELEVEN STORE.

15. That said purchases by Excel and Tursonzada included, from time to time, purchases of 5 HOUR ENERGY liquid dietary supplement, said product being more specifically described in the Complaint herein.

16. That any purchases of all products made by Excel and Tursonzada from Top Choice were made in the ordinary course of Excel's and Tursonzada's business, including any purchases of 5 HOUR ENERGY products.

17. That Top Choice held itself out to Excel and Tursonzada as being a legitimate wholesaler of various products selling to wholesalers only authentic products of the highest quality.

18. Upon information and belief, all or some of the 5 HOUR ENERGY products purchased by the Defendants, Excel and Tursonzada, from Top Choice, were counterfeit.

19. That Excel and Tursonzada, relied upon the honesty and integrity of Top Choice in making purchases of any kind from said company, and specifically relied upon such honesty and integrity when purchasing 5 HOUR ENERGY products.

20. That if Excel and Tursonzada purchased counterfeit 5 HOUR ENERGY products, then said purchases were made without knowledge that said product was not authentic.

21. That Excel and Tursonzada allege that the acts of Top Choice as set forth herein expose them to damage and expense.

22. Therefore, under general equitable principals and the rules of law governing this action - Excel and Tursonzada are entitled to indemnity from Top Choice for any and all awards against them in favor of Plaintiff for Plaintiff's alleged damages as determined by the trier of the facts.

WHEREFORE, Defendants, Excel Wholesale Distributors, Inc. and Farid Tursonzada demand judgment dismissing the Complaint, as against them, in all respects and for a further judgment awarding to them the costs and disbursements incurred herein, including reasonable attorney's fees, and for such other and further relief as to this Court may deem just and proper, and that Excel Wholesale Distributors Inc. and Farid Tursonzada have judgment over and against Defendant, Top Choice Trading USA, Inc. for any sum, including costs, disbursements and counsel fees, which may be recovered against them by Plaintiff, together with costs and expenses including counsel fees of this action.

Dated: Massapequa, New York
January 30, 2013

Yours, etc.

/S/ Stephen Kressel
Stephen Kressel, Esq.
KRESSEL & ROTHLEIN, P.C.
*Attorneys for Defendants, Excel Wholesale
Distributors Inc. and Farid Tursonzada*
684 Broadway
Massapequa, New York 11758
(516) 798-5363

TO: Patterson, Belknap, Webb & Tyler, LLP
1133 Avenue of the Americas
New York, New York 10036-6710

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CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of January 2013, I electronically filed the Answer to Seventh Amended Complaint on behalf of Defendants Excel Wholesale Distributors, Inc. and Farid Tursonzada, with the Clerk of the District Court using its CM/ECF system, which would then electronically notify the following CM/ECF participant in this case: Patterson Belknap Webb & Tyler LLP; 1133 Avenue of the Americas, New York, New York 10036; Geoffrey Potter, gpotter@pbwt.com; Christos Yatrakis, cyatrakis@pbwt.com; Michelle Waller Cohen, mcohen@pbwt.com; Jeremy A. Weinberg, jweinberg@pbwt.com.

KRESSEL & ROTHLEIN, P.C.

By: /S/ Stephen Kressel
Stephen Kressel
*Attorneys for Defendants, Excel Wholesale
Distributors Inc. and Farid Tursonzada*
684 Broadway
Massapequa, New York 11758
(516) 798-5363